

**Letter of Findings: 65-20191129
Indiana Oversize/Overweight Proposed Assessment
For the Year 2017**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Indiana Department of Revenue's (the "Department") official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

The Department sent Motor Carrier a proposed assessment for two oversize/overweight civil penalties for violating a permit. Because Motor Carrier did not violate the permit terms cited by the Department in its proposed assessment, Motor Carrier's protest is sustained.

ISSUE

I. Motor Vehicles - Oversize/Overweight Penalty.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-1-1; IC § 9-20-1-1; IC § 9-20-1-2; IC § 9-20-6-8; IC § 9-20-6-11; IC § 9-20-18-14.5; *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer protests the assessment of two oversize/overweight civil penalties.

STATEMENT OF FACTS

Taxpayer is a motor carrier that does business in Indiana. On November 22, 2017, the Indiana State Police ("ISP") voided Taxpayer's permit because Taxpayer violated the permit's holiday restriction term. As a result, the Department issued Taxpayer a proposed assessment for oversize/overweight ("OS/OW") civil penalties. Taxpayer disagreed with the assessment of penalties and submitted a protest to that effect. Taxpayer waived right to an administrative hearing. This Letter of Findings results. Further facts will be supplied as necessary.

I. Motor Vehicles - Oversize/Overweight Penalty.

DISCUSSION

Taxpayer protests the imposition of civil penalties. The Department based its proposed assessment on a report provided by the ISP. The ISP report showed that Taxpayer had obtained and was traveling with a permit allowing the weight being transported. It also showed that ISP voided the permit because the vehicle was being operated on a state highway at or after noon before a national holiday, which is violation of the permit issued by the Department. According to the permit terms, permitted vehicles may not operate on a state highway from noon the last weekday preceding and continuing until one half hour before sunrise on the day following certain holidays, including Thanksgiving Day. Because the ISP voided the permit, the Department concluded that the permitted weight amounts should not be considered when determining whether Taxpayer was transporting cargo pursuant to permit terms.

As a threshold issue, it is Taxpayer's responsibility to establish that the existing proposed assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "[t]he notice of proposed assessment is prima facie evidence that the [D]epartment's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

According to IC § 9-20-1-1, "[e]xcept as otherwise provided in [IC Art. 9-20], a person, including a transport operator, may not operate or move upon a highway a vehicle or combination of vehicles of a size or weight exceeding the limitations provided in [IC Art. 9-20]."

According to IC § 9-20-1-2, "an owner of a vehicle ... may not cause or knowingly permit to be operated or moved upon a highway a vehicle or combination of vehicles of a size or weight exceeding the limitations provided in [IC Art. 9-20]." According to IC§ 9-20-6-1 I(b), "[a] person may not violate the terms or conditions of a special permit."

IC § 9-20-6-8 provides that: "A permit issued under this article may designate the route to be traversed and contain any other restrictions or conditions necessary for the proper protection of the traffic, highway, or bridge."

IC § 9-20-18-14.5 authorizes the Department to impose civil penalties against motor carriers that obtain a permit under IC Art. 9-20 and violate IC Art. 9-20 ("Permit Violation Civil Penalty") or are required, but fail, to obtain a permit under IC Art. 9-20 ("No Permit Civil Penalty"). IC § 9-20-18-14.5(c) provides that a person "a person who transports vehicles or loads subject to this article and fails to obtain a permit required under this article is subject to a civil penalty of not more than five thousand dollars (\$5,000) for each violation." According to IC § 9-20-18-14.5(b), the Department may subject a person to a civil penalty if the person "obtains a permit under" IC Art. 9-20 and violates IC Art. 9-20.

IC § 6-8.1-1-1 states that fees and penalties stemming from IC Art. 9-20 violations are a "listed tax." According to IC§ 9-20-18-14.5(a)(3), these listed taxes are in addition to and separate from any arrangement or agreement made with a local court or political subdivision regarding the traffic stop.

In this case, Taxpayer possessed a valid permit at the time of the inspection; however, the ISP voided the permit because Taxpayer violated the permit's holiday restriction term. As a result of the ISP voiding Taxpayer's permit, Taxpayer was issued a Permit Violation Civil Penalty under IC § 9-20-18-14.5(b), for being overweight. Taxpayer was also issued a Permit Violation Civil Penalty for not securing the load in violation of the permit.

To impose a Permit Violation Civil Penalty, IC§ 9-20-18-14.5(b) states that the Department must show that a person obtained a permit under IC Art. 9-20 and violates the IC Art. 9-20. To that end, IC§ 9-20-6-1 I(b) states that "[a] person may not violate the terms or conditions of a special permit." Here, the Department observes that Taxpayer did obtain an overweight permit before transporting its cargo, possessed a valid permit at the time of the inspection, and, at the time of the inspection, the gross total weight was within the permitted gross weight.

Additionally, neither the permit terms nor IC Art. 9-20 require securing the cargo in question. IC § 9-20-18-14 requires "logs, lumber, pipes, poles, tanks, boilers, or similar objects" to be securely fastened. The cargo in question is calcium aluminate, a type of cement. Calcium aluminate is not similar to the types of cargo IC § 9-20-18-14 requires to be securely fastened. Therefore, it is not appropriate to impose a Permit Violation Civil Penalty for not securing the cargo in question.

For these reason, Taxpayer should not have been assessed for two Permit Violation Civil Penalties for being overweight and for not sufficiently securing a load. Please note the Department reserves the right to impose another civil penalty regarding this violation or any other violation if the original civil penalty was imposed incorrectly.

FINDING

Taxpayer's protest is sustained.

March 2, 2020

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